

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition of BellSouth Corporation for Special)	WC Docket No. 06-63
Temporary Authority and Waiver To Support)	
Disaster Planning and Response)	
)	
Petition of Verizon for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petition of Qwest Communications)	
International Inc. for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petitions for Rulemaking and Clarification)	RM-11358
Regarding the Commission's Rules Applicable)	
to Retirement of Copper Loops and Copper)	
Subloops)	

**XO COMMUNICATIONS SERVICES, LLC’S OBJECTION TO VERIZON’S
INVOCATION OF THE LIMITED WAIVER AND SPECIAL TEMPORARY
AUTHORITY GRANTED IN THE ORDER ISSUED *IN THE MATTER OF PETITION
OF BELL SOUTH CORPORATION FOR SPECIAL TEMPORARY AUTHORITY AND
WAIVER TO SUPPORT DISASTER PLANNING AND RESPONSE* AND REQUEST FOR
A CEASE AND DESIST ORDER**

INTRODUCTION AND SUMMARY

XO Communications Services, LLC (“XO”) hereby objects to the application of the limited waiver and special temporary authority (collectively, “STA”) that the Federal Communications Commission (“Commission”) granted in *In the Matter of Petition of BellSouth Corporation for Special Temporary Authority and Waiver To Support Disaster Planning and*

Response, Order, 21 FCC Rcd 6518 (2006) (“*STA Order*”) to Verizon’s network changes to copper facilities in Lower Manhattan from its 140 West Street and 104 Broad Street central offices allegedly affected by Hurricane Sandy in October, 2012. As explained herein, Verizon has improperly invoked the *STA Order* through an April 25, 2013 notice of network changes because at least some of those network changes were not a direct result of the damage caused by Hurricane Sandy. (Original Notice: *Public Notice of Network Change Under Rule 51.329(A)* (“April 25, 2013 Notice”).¹ As a result of Verizon’s misstatements and abuse of the relief established in the *STA Order*, the service alternatives competitors can make available to end users in the foregoing two central offices have been reduced, and competition has been diminished.

In light of the serious problems discussed herein, including but not limited to problems involving the accuracy of Verizon’s communications with the public, its wholesale customers (competitors), and the Commission regarding the availability of network facilities, the Commission should investigate the facts surrounding the communication about and availability

¹ Almost three weeks after issuing the April 25, 2013 Notice, Verizon issued a Notice captioned “Short-Term Public Notice of Network Change Under Rule 51.333: Amended” (“May 10, 2013 Notice”). Despite its caption, the May 10, 2013 Notice reads as an amendment to the April 25, 2013 Notice and relates to the same network changes allegedly covered by the April 25, 2013 Notice. *See* May 10, 2013 Notice, n. 1 (citing *STA Order*). The May 10, 2013 Notice does not appear to relate to prospective changes as contemplated by the Commission’s Rules for “Short Term Notices,” which can only be filed under Section 51.333. Under Section 51.333, even if no information service provider or telecommunications service provider objects to the notice, “under no circumstances may an incumbent LEC provide less than 90 days notice of [a network] change.” 47 C.F.R. § 51.333(b)(2). Given its contents and subject, the May 10, 2013 Notice should be treated in all respects as an attempted Section 51.329(a) Notice invoking the *STA Order* indistinguishable from the April 25, 2013 Notice. In any event, if the May 10, 2013 Notice is treated as a short term notice of copper retirement under Section 51.333, that Notice cannot pertain to any network change prior to August 8, 2013, or an even later date if there are objections to the May 10, 2013 Notice. In the event the Commission issues a Public Notice in connection with the May 10, 2013 Notice (*see* 47 C.F.R. § 51.333(b)), XO reserves its right to file an objection to the Notice.

of copper after Hurricane Sandy as raised herein and the full extent to which Verizon has violated the Commission's network change disclosure rules by invoking the *STA Order* where copper remained undamaged or available through restoration after Hurricane Sandy. Further, because XO demonstrates herein that copper is still available in the affected central offices, the Commission should issue a cease and desist order enjoining Verizon from making any further changes on the basis of its Notice and the invocation of the *STA Order* pending the completion of the requested investigation.

Finally, XO requests that the Commission consider this objection, and the results of any investigation the Commission undertakes, in connection with the pending request of numerous competitors, including XO, that the Commission substantially update its rules regarding incumbent local exchange carrier ("ILEC") copper retirements in light of the new, innovative – and competitive – broadband services that XO and others are now offering, and are increasingly offering, by means of ILEC copper loop plant.² As part of that update to its copper retirement rules, the Commission should revoke the *STA Order* as it relates to relief from the Commission's network disclosure rules and its copper retirement rules.

I. Verizon's Has Failed to Comply with the STA Order, and Its Reliance on the STA is Unfounded

In the April 25, 2013 Notice, Verizon claims that the *STA Order* is applicable to the two affected central offices here because, more than six months previously, Verizon had invoked a

² See Comments of XO Communications, LLC and Broadview Networks, Inc., GN Docket 12-353 and RM-11358, at 5-8 (filed Mar. 5, 2013) ("XO/Broadview Comments"). XO is also filing this objection as part of the record in the 2007 copper reform docket, RM 11358, which was commenced by a petition filed by XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. See XO Communications, LLC, *et al.*, Petition for Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, RM-11358 (filed Jan. 18, 2007).

disaster response plan in connection with Hurricane Sandy and the damage it caused in those central offices. In the *STA Order*, the Commission granted a narrowly circumscribed waiver of the network disclosure rules that requires advance notice and waiting periods before an ILEC's network changes can be made.³ The limited waiver is restricted to a period of 180 days after an ILEC invokes its disaster recovery plans. The Commission stated "[a]s we found in the *AT&T STA Order* as well as our *Network Disclosure Waiver Order*, we find that in the event of a disaster, requiring compliance with these rules would impede restoration efforts and delay recovery and therefore waiver of the Commission's network disclosure rules serves the public interest given the unique circumstances of a hurricane or other disaster."⁴ Verizon filed the Notice on April 25, 2013, at day 178 of the 180 day limitation, as it appears from the Notice that Verizon invoked its disaster response plan on October 29, 2012, the day Hurricane Sandy hit the northeastern United States, including New York.

The *STA Order* sets forth specific circumstances in which a waiver is available to the Rules' advance notice and waiting periods. A waiver under the *STA Order* is available only with respect to "network changes that are a direct result of damage to the Petitioners' network infrastructure caused by the disaster."⁵ As set forth in detail below, XO has firm reason to believe that Verizon's claim that its changes to (i.e., retirement of) its copper network in Lower Manhattan directly resulted from damage to copper facilities from Hurricane Sandy has no basis with regard to certain copper facilities.⁶ While it appears that a large portion of Verizon's Lower

³ Under the waiver, an ILEC must still comply with the notice requirements of Section 51.325(a) of the Commission's Rules. See *STA Order*, ¶19 and n. 66.

⁴ *STA Order*, ¶ 19.

⁵ *Id.*

⁶ As a result of, among other things, Verizon's lack of transparency and inaccurate and inconsistent representations, it is difficult, if not impossible, for XO to determine the

Manhattan network was at least temporarily out of service as a result of the storm, XO is aware that in some cases the copper facilities that Verizon has replaced with fiber or is seeking to justify replacing remained in working order or could have been restored following Hurricane Sandy. In other words, not all of the copper that Verizon seeks to retire (or has retired) pursuant to the *STA Order* was irreparably damaged by the storm, and, in turn, the network changes identified in the Notice in all cases have not been, or are not, the direct result of damage to Verizon copper.

Verizon is seemingly using the damage and disruption caused by Hurricane Sandy in many instances as a fig leaf to cover its own efforts to hamper its competitors. This is clearly not what the limited waiver on which Verizon seeks to rely was designed to permit. At bottom, regardless of Verizon's motives, because the basic requirements established in the *STA Order* for waiving the notice requirements have not been met, XO objects to Verizon's abusive attempt to invoke the *STA Order*.

A. Verizon Failed To Accurately Communicate Network Changes to Its Competitors

The *STA Order* clearly requires that "Petitioners must continue to comply with section 51.325(a)⁷ and must communicate with other carriers to ensure that such carriers are aware of any changes being made to their networks that may impact their operations."⁸ Verizon has

exact extent to which Verizon's copper facilities already retired or being retired in Lower Manhattan were, or were not, in fact "destroyed" by Hurricane Sandy. An investigation is accordingly warranted to make such determination.

⁷ See 47 C.F.R. § 51.325(a) (setting forth the circumstances in which an ILEC must provide public notice of a network change, including, among other things, network changes that will affect a competing service provider's ability to provide service and an ILEC's interoperability with other service providers); see *id.* at §§ 51.325(a)(1)-51.325(a)(2).

⁸ *STA Order*, ¶ 19.

claimed it has been the paragon of open communication by holding daily status calls and posting information on its website. But in reality, from the beginning, Verizon has, in contravention of the *STA Order* and the requirements of 47 C.F.R. § 51.325(a), provided competitors with misinformation regarding the status of the copper facilities in the 140 West Street and 104 Broad Street central offices.⁹ Verizon communicated to XO and others that, as a result of Hurricane Sandy, copper facilities were “destroyed” and thereby forced competitors on to more expensive fiber services.¹⁰ In reality, based on just the limited information available to XO, it appears that at least some of the allegedly affected copper remained functional and could have been used to restore the copper-based services being used by competitors to serve their end user customers before the storm.¹¹

Verizon’s communications to competitors regarding the status of copper facilities at 140 West Street central office in Manhattan (“West Street CO”) following Hurricane Sandy were contradictory and ultimately misleading. On November 28, 2012, Verizon initially claimed, and posted a list on their website indicating, that all of the copper in 99 identified buildings served out of that office was damaged beyond repair as a direct result of Hurricane Sandy.¹² On December 13, 2012, Verizon provided XO a list of DS0 circuits out of the 104 Broad Street and 140 West Street offices claiming that the identified DS0s provisioned over copper would have to

⁹ Verizon’s miscommunications are detailed in the Declaration of Daniel J. Horgan attached to this Objection (“Declaration”).

¹⁰ See April 25, 2013 Notice and May 10, 2013 Notice (collectively, the “Notices”). Verizon tries to mask the nature of what transpired by stating in the Notices that “Verizon has been working to provide alternative platforms in place of damaged copper facilities in these areas, primarily using more advanced fiber facilities.”

¹¹ See generally Declaration at ¶¶ 4-11.

¹² See *id.* ¶ 9.

be migrated to Verizon fiber replacement services.¹³ Relying on that information, XO began working with its existing customers served by Verizon copper to migrate customers who wished to retain service with XO to Verizon’s alternative fiber services.¹⁴ Yet, after being pressured by competitors regarding the accuracy of this claim, Verizon subsequently changed its assertion and agreed to determine, when requested, on a circuit-by-circuit basis, whether or not circuits were up and working on copper facilities or whether or not they could be restored on copper facilities. Ultimately, after Verizon finished testing circuits at XO’s request, the data provided by Verizon indicated that XO would no longer be able to maintain services on copper in 31 buildings served out of the West Street CO in which XO had customers serviced by copper before the storm (the “31 Buildings”).¹⁵ In its April 25, 2013 Notice, Verizon, however, listed only 5 buildings out of the West Street CO where XO had been supporting its customers using Verizon copper as being locations where the copper was “no longer available” as a result of Hurricane Sandy.¹⁶ Further, of the 31 Buildings where Verizon had previously informed XO that copper was no longer available to serve its customers, only two are identified in the Notice.¹⁷ If Verizon maintains this copper had been destroyed by Hurricane Sandy, it is inexplicable that 29 of the 31 Buildings are not listed in Verizon’s April 25, 2013 Notice. Notably, Verizon did not add any of these 29 buildings in its May 10, 2013, Notice. As a result, the network changes that occurred in those 29 buildings, even if they had been the result of damage caused by Hurricane Sandy as Verizon had

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.* ¶ 10.

¹⁶ *See id.* ¶ 11.

¹⁷ *See id.*

told XO, were not covered by waiver granted under the *STA Order* because Verizon failed to give notice within the 180 days following the invocation of its disaster recovery plan.

The inconsistencies and apparent inaccuracies in Verizon's communications caused considerable uncertainty among competitors. As a result of the discrepancy between the Notice and earlier communications, XO, a competitor, is unsure of the network changes being made to Verizon's network in New York as a result of Hurricane Sandy that may impact its operations. This extended and continuing uncertainty (in conjunction with a lack of written details from Verizon regarding replacement services) made it difficult for XO to accurately communicate with its own end users and prospective customers. In addition, the significant inconsistencies between Verizon's communications with XO and others and the Notices are themselves a violation of 47 C.F.R. § 51.325(a) and the *STA Order*. By requiring XO (and potentially other competitors) to migrate from copper to fiber in 29 buildings not identified in the Notices, Verizon has not complied with the *STA Order*'s requirements.¹⁸

B. Many of the Network Changes for Which Verizon Has Attempted to Invoke the STA Were Not a Direct Result of Damage Caused by Hurricane Sandy

Equally troubling is the extent to which Verizon's copper plant in the two central offices at issue was "destroyed" and when and how it came to be "destroyed." In the case of buildings served out of the 104 Broad Street central office in Manhattan ("Broad Street CO"), as early as November 14, 2012, during an industry call, Verizon claimed that all its copper plant there was

¹⁸ XO does not know which or how many other competitors might have been affected by Verizon's miscommunications regarding the status of copper facilities in these 29 buildings, or the extent to which other competitors had similar experiences in other buildings in New York City central offices. Determining the extent of the impact from Verizon's miscommunications should be a primary focus of the Commission investigation, which XO urges the Commission to initiate.

destroyed by Hurricane Sandy.¹⁹ In fact, XO had some customers served out of that office using copper loops that had November usage on their services after Hurricane Sandy left the New York area and after Verizon claimed all of its copper in this office was destroyed.²⁰ This plainly means that, contrary to Verizon's assertions, the copper serving those customers could not have been destroyed by Hurricane Sandy. Specifically, XO was told by Verizon personnel that all of the copper had been removed from the cable vault at the Broad Street CO but later learned that some copper remained and that actually all of the remaining cable would be removed from the Broad Street CO in the July 2013 time frame.²¹ XO's customers served out of the Broad Street office, who had usage after the Hurricane, have either lost their service already because Verizon removed copper or will lose service in July after Verizon affirmatively removes the copper (all contrary to earlier statements by Verizon).²²

Even today, after Verizon stated in its Notices that "all copper outside plant facilities" served out of the Broad Street CO are no longer available as a result of Hurricane Sandy, some copper remains functional. XO has two customers whose services are carried over Verizon copper loops coming out of this office which remains operational today.²³ It is XO's understanding, based on conversations with the Verizon project manager working Hurricane Sandy issues, however, that Verizon, relying on the *STA Order* and its waiver, intends to pull any remaining copper in buildings served out of the Broad Street CO in July, 2013, even though

¹⁹ See Declaration, ¶ 4.

²⁰ See *id.* ¶ 6.

²¹ See *id.* ¶ 7.

²² See *id.*

²³ See *id.*

more than 180 days have passed since Verizon invoked its disaster recovery plan.²⁴ When Verizon does so, XO's remaining two customers served by operational copper loops out of the Broad Street CO will lose their Ethernet over Copper ("EoC") services.²⁵ Accordingly, XO has been forced to coordinate migration of these customers to fiber-based services.

The case of the 140 West Street CO is similar regarding the operation of copper loops after the storm had passed. There, even though Verizon initially claimed that copper loops to 99 buildings served out of that CO were destroyed and XO (among other competitors) would have to transition customers in such buildings to alternative fiber-based services, at least one XO carrier customer served using copper loops was adamant in wanting to remain on copper facilities and contacted Verizon directly.²⁶ As a result of that contact, not only did Verizon permit that carrier customer to continue receiving XO services based on copper loops, but Verizon reluctantly did further network testing and agreed to retain or restore copper services from 140 West Street to many of the buildings on the list where Verizon had originally said the copper plant was destroyed.²⁷ However, XO has been required to take an alternative fiber-based service from Verizon in order to continue providing service to its existing EoC customers (that remained with XO following Hurricane Sandy) in the 31 Buildings where Verizon claimed copper-based service could not be restored.²⁸ Yet, of the 31 Buildings where XO ultimately was

²⁴ *See id.*

²⁵ Again, XO does not know how many other competitors and their customers, who may continue to be served through copper that remains operational, will be affected. The Commission should investigate this.

²⁶ *See id.* ¶ 10.

²⁷ *See id.*

²⁸ *See id.* ¶ 9. While Verizon has agreed to provide credits for the difference between fiber replacement services and the original copper services, those credits last only through October, 2014 and apply only to customers served over copper when Hurricane Sandy

unable to restore or maintain services on copper, only two of those buildings were on Verizon's list included in the Notice, suggesting that copper remains available to competitors in the remaining 29 buildings when in fact, Verizon has forced XO to abandon its copper based services in these buildings.²⁹

II. The Commission Should Find That Verizon Violated the *STA Order* and the Network Change Disclosure Rules and Issue a Cease and Desist Order Pending Further Investigation

The fact is that, Verizon's claims regarding damage from Hurricane Sandy notwithstanding, Verizon has never actually demonstrated that all, or even most, of the copper facilities serving Lower Manhattan were rendered inoperable as a direct result of the storm. To the contrary, as detailed above, there is clear evidence that at least some of the copper was not destroyed or rendered inoperable by the storm. Thus, it appears to have been Verizon's affirmative efforts to remove or disable its functioning copper plant out of those two central offices that have rendered that plant inoperable or incapable for restoration. Network changes to copper loops "damaged" by Verizon, not Hurricane Sandy, do not fall within the ambit of the waiver made available in the *STA Order*.

For reasons detailed in the previous two sections of this Objection, the Commission should find Verizon had no legitimate basis to invoke the limited waiver and special temporary authority granted in the *STA Order* as it relates to the Broad Street and West Street COs – or at least the copper not irreparably damaged by Hurricane Sandy in those central offices. The Commission should also find that Verizon accordingly failed to comply with the requirements of 47 C.F.R. §§ 51.325-335 with regard to network changes to copper plant made by Verizon for

hit. Those credits do not apply to new customers taking service that XO would provision using copper loops where available.

²⁹ See *id.* ¶¶ 11-12.

those central offices (or at least the copper not damaged by Hurricane Sandy in those central offices.).

The Commission should commence an investigation of the scope of copper facilities affected by Verizon's unwarranted copper retirement activities rather than Hurricane Sandy and take further action as appropriate. Among other topics, the Commission investigation should examine why Verizon has refused to restore copper facilities in at least 29 buildings served by the West Street CO where XO has customers supported by copper-based loops that were not included in its Notice and why Verizon authorized the removal of copper that was not damaged by the storm, some of which is apparently still functioning out of the Broad Street CO.

Pending that investigation, to ensure that Verizon's abuse of the *STA Order* and the Commission's Rules does not result in any further diminishment of copper availability, the Commission, pursuant to Section 312(b) of the Communications Act, should issue a cease and desist order enjoining Verizon from retiring any further copper from these two central offices that remains operational or is capable of being restored. In addition, the Commission should require Verizon to provide fiber-based services to CLEC customers (both new and existing) served out of the Broad Street and West Street COs, supporting capacity equivalent to that which the CLECs could have provided their customers using copper. Such fiber-based services should be offered at the equivalent price of the copper loops that would have been used by the CLECs to serve their customers.

III. The Commission Should Revoke the Limited Waiver and Special Temporary Authority in the *STA Order* As It Applies to Verizon

In addition to granting the foregoing relief, XO requests that the Commission consider this Objection and the results of the investigation the Commission undertakes in connection with the pending request of XO and others in RM-11358. In that proceeding, XO and other

competitive carriers have asked the Commission to substantially update its rules regarding ILEC copper retirements in light of significant marketplace developments occurring and the threat the copper retirement rules pose to competition that were not foreseen when those rules were adopted.³⁰ Regardless of whether the Commission finds Verizon properly invoked the STA granted in the *STA Order* with regard to the network changes it has made to the Broad Street and West Street COs, the Commission should revoke the *STA Order* as part of revising the copper retirement rules in RM-11358. By giving incumbent local exchange carriers such as Verizon relief from network disclosure rules for 180 days after a disaster recovery plan has been invoked and imposing few, if any, reporting obligations or standards for such network changes, the limited waiver granted in the *STA Order* provides more than ample opportunity for ILECs to engage in anticompetitive behavior, denying competitors access to essential copper facilities under the guise of responding to a natural disaster.

It is evident, for example, that Verizon has a strong incentive to engage in anticompetitive behavior, especially in major metropolitan markets such as New York City. Lower Manhattan, which was severely impacted by Hurricane Sandy, is an epicenter of American business and historically a highly competitive telecommunications market. Yet Verizon retains the preeminent position in terms of facilities-based access to end users upon which its competitors rely, a position from which Verizon can exert significant market power. Verizon's treatment of its competitors who also are Verizon's wholesale customers can significantly reshape the competitive market in Lower Manhattan. As explained more fully in the XO/Broadview Comments, competitors like XO use combinations of copper loops together

³⁰ See e.g., XO/Broadview Comments at 5-8; Reply Comments of XO Communications, LLC and Broadview Networks, Inc., GN Docket 12-353 and RM-11358 (filed Mar. 20, 2013) ("XO/Broadview Reply Comments").

to offer a highly effective and competitively priced broadband service, so-called Ethernet over Copper service, to business customers.³¹ This service costs significantly less than equivalent bandwidth services offered over fiber and can be installed much more rapidly than deploying new fiber to meet customer demand.

Verizon has the economic motivation to impede the ability of its competitors to offer to end users this innovative alternative to its fiber-based high capacity services by broadly interpreting the applicability of the *STA Order*. Indeed, by “retiring” its copper plant, to the extent that competitors can continue to serve their customers at all, the only option under the current unbundling rules is for competitors is to use expensive and lower-bandwidth capabilities of Verizon’s replacement fiber loops which do not offer either an effective or adequate substitution.³²

Public statements made by Verizon officials seem to support the notion that Verizon has been exploiting the Hurricane Sandy situation to its own advantage and the disadvantage of competitors. For example, on December 4, 2012, Fierce Telecom reported that Lowell McAdam, CEO of Verizon Communications, told attendees at the UBS Financial Conference that while the company could not offer an estimate on the actual damage to its network, he sees an opportunity to “take advantage of this disruption” and proceed with the fiber replacement strategy.³³

³¹ See XO/Broadview Comments at 5-7.

³² See *id.* at 10-11.

³³ Buckley, Sean, “Verizon Takes Advantage of Superstorm Sandy To Accelerate Copper-to-Fiber Migration,” FierceTelecom, December 4, 2012, available at <http://www.fiercetelecom.com/story/verizon-takes-advantage-superstorm-sandy-accelerate-copper-fiber-migration/2012-12-04>.

In permitting Verizon to “retire” copper by initially filing a Section 51.329(a) notice 178 days after invocation of its disaster recovery plan and excusing Verizon from adherence to the majority of the Commission’s network disclosure rules in a situation where copper remained operational for months following the natural disaster, the *STA Order* gives incumbents ample opportunity to use natural disasters as a pretext to take broader copper retirement actions that impede competition with little oversight or repercussions. It is one thing for a carrier to be excused from Commission filing obligations in the midst of, or in the immediate aftermath of, a major disaster where copper has unmistakably proven to be damaged. It is quite another for the carrier to be exempted from Commission filing requirements for as long as it continues recovery work following a natural disaster – no matter how many months have passed since the disaster occurred, how broad (or narrow) the actual damage to the copper plant has been, or how routine the recovery efforts have become. Accordingly, Verizon’s actions in the wake of Hurricane Sandy provide sufficient evidence that the Commission should revoke the *STA Order* as part of revising the copper retirement rules.

CONCLUSION

Following Verizon’s abusive behavior regarding these copper “retirements” in Lower Manhattan, XO believes that it is critical that the record here contain an explanation of the extent of the damage resulting from the storm and evidence that Verizon itself – not Hurricane Sandy – is actually responsible for much of the destruction of copper facilities in Lower Manhattan.

For the reasons set forth above, the Commission should reject Verizon’s attempt to claim the limited waiver granted in the *STA Order* at least as it relates to the Broad Street and West Street COs and find that Verizon failed to comply with the requirements of 47 C.F.R. §§ 51.325-335 with regard to network changes to copper plant made by Verizon for those COs. The

Commission should initiate an investigation to review all of the issues identified herein, including among other things, continual miscommunications by Verizon to its wholesale customers, why Verizon has refused to restore copper facilities in at least 29 buildings served by the West Street CO that were not included in its Notice, and why Verizon authorized the removal of copper that was and is apparently functioning out of the Broad Street CO. The Commission should also issue a cease and desist order enjoining Verizon from removing any of the remaining copper in the two referenced central offices pending that investigation. Finally, the Commission should rescind the limited waiver of the network change disclosure rules granted in the *STA Order* as part of the copper reform docket, RM-11358.

Respectfully Submitted

XO COMMUNICATIONS SERVICES,
LLC

/s/ Edward A. Yorkgitis, Jr.

Edward A. Yorkgitis, Jr.
Joshua T. Guyan
Kelley Drye & Warren LLP
3050 K Street NW
Suite 400
Washington, D.C. 20007
Telephone: (202) 342-8400
Facsimile: (202) 342-8451

July 1, 2013

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition of BellSouth Corporation for Special)	WC Docket No. 06-63
Temporary Authority and Waiver To Support)	
Disaster Planning and Response)	
)	
Petition of Verizon for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petition of Qwest Communications)	
International Inc. for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petitions for Rulemaking and Clarification)	RM-11358
Regarding the Commission's Rules Applicable)	
to Retirement of Copper Loops and Copper)	
Subloops)	

**DECLARATION OF
DANIEL J. HORGAN**

1. My name is Daniel J. Horgan. I am the Director of Carrier Relations at XO Communications, LLC (XO). I submit this Declaration in support of XO's Objection to Verizon's Invocation of the Limited Waiver and Special Temporary Authority Granted in the Order Issued *In the Matter of Petition of Bellsouth Corporation for Special Temporary Authority*

and Waiver To Support Disaster Planning and Response and Request for a Cease and Desist Order in the above-captioned Federal Communications Commission (FCC) proceedings.

2. As XO's Director of Carrier Relations since April, 2012, I am responsible for the overall management of our Access Vendors. This includes all contract negotiations for Master Service Agreements, Volume Buying Plans, Product Schedules/Pricing, and Service Orders for existing vendors as well as evaluation of new vendors to ensure we have competitive Access solutions to support our customers. My team also manages the Operational Performance of our Access Vendors via regular Service Reviews for Provisioning and Repair to insure our Vendors are installing and maintaining services in line with contracted Service Level Agreements. Prior to working for XO, I held numerous positions in Access Management at Global Crossing and Level 3. In those positions over a 12-year period I had very similar responsibilities to those I have here at XO today in the procurement and operational management of regulated and unregulated access services and vendors.

3. On October 29, 2012, the day Hurricane Sandy hit the northeastern United States, Verizon sent an Industry Letter regarding its preparation efforts in anticipation of Hurricane Sandy stating that Verizon "had activated national and regional command and control centers, enabling Verizon operations teams to monitor the storm's progress and company operations, including network performance." A copy is appended hereto as Exhibit A. In addition, this Industry Letter invited carriers to a status call on October 30, 2012. On this call, Verizon reviewed the impact of Hurricane Sandy to its central offices and remote terminals, power outages as well as how operational matters would be handled in light of Hurricane Sandy. Verizon continued these call three times a week until early January, 2013. I or another XO representative participated on each of these calls.

104 Broad Street

4. On a November 7, 2012 call with competitors, Verizon indicated that it expected power and equipment at the 104 Broad Street central office to be restored. On the November 14, 2012, call with competitors, Verizon stated that there was no copper plant in the 104 Broad Street central office that could be restored and that all of it would have to be replaced. On November 21, Verizon reported that all of the outside plant from its 104 Broad Street central office, going forward, would be fiber.

5. In its April 25, 2013 Notice (*Public Notice of Network Change Under Rule 51.329(A)*) Verizon also asserts that this copper was “destroyed.” It states:

As a result of Hurricane Sandy, Verizon copper network facilities are no longer available to provide services at the locations listed in Attachment A, and certain unbundled network elements are no longer available for these locations.

Attachment A

1. All copper outside plant facilities (feeder, distribution, and loops) associated with the Verizon wire center located at 104 Broad Street, New York, NY. CLLI: NYCMNYBS (Broad Street)

6. Verizon claims that all its copper plant out of the Broad Street central office was destroyed by Hurricane Sandy conflict with XO’s experience as a wholesale customer of Verizon. XO had end user customers served out of the Broad Street central office using Verizon copper loops that had November usage on their services weeks after Hurricane Sandy left the New York area and after Verizon informed competitors that all of its copper in this office had been destroyed. If the services of XO’s customers were operational, which is the only way I am aware that there could be usage, then all of the copper could not have been destroyed by Hurricane Sandy, as Verizon claims.

7. Subsequently after the November 21, 2012 communications, XO initially understood from Verizon personnel, that all of the copper had been removed from the cable vault at Broad Street, but later learned that some copper remained and that the remaining cable would be removed from Broad Street in the July 2013 timeframe. The only available explanation for these services becoming non-functioning is because these facilities have been or are going to be removed or “destroyed” at the hands of Verizon personnel. As of today, two XO EoC (Ethernet over Copper) customers, served out of the Broad Street central office, remain in service. We have been told by Verizon that these two customers must also be moved to fiber based replacement services because the remaining copper will be removed by Verizon in July, 2013.

8. The only written notice that XO has ever received from Verizon regarding the unavailability of copper out of the 104 Broad Street central office is the April 25, 2013 Notice, by which Verizon invoked the *STA Order* and the limited waiver of the network change disclosure rules. (Verizon also provided a notice dated May 10, 2013, (*Short-Term Public Notice of Network Change Under Rule 51.333: Amended*) which appears identical to the April 25, 2013, Notice except for the heading.) Verizon has not followed the generally applicable copper retirement rules under Section 51.333 of the Commission’s Rules with respect to the copper loops that remained operational out of this central office following Hurricane Sandy.

140 West Street

9. Regarding copper facilities out of Verizon’s central office 140 West Street, on the November 21, 2012 call with competitors, Verizon indicated that it would be determining if service could be restored on copper. On the November 28, 2012 call, Verizon stated that the copper had been destroyed to 99 buildings served by the West Street central office and, therefore, these 99 buildings could no longer be served using copper. Verizon posted a listing on

their website at the same time to the same effect. On December 13, 2012, Verizon provided XO a list of DS0 circuits out of the 104 Broad Street and 140 West Street offices claiming that as a result of Hurricane Sandy the identified DS0s provisioned over copper would have to be migrated to Verizon fiber replacement services. Relying on that information, XO began working with its existing customers served by Verizon copper to migrate customers who wished to retain service with XO to Verizon's alternative fiber services.

10. Even though Verizon had initially claimed that copper to all the circuits on the list was so damaged that it could not be restored, a carrier customer of XO being served by a subset of those copper loops was adamant that they remain on copper facilities. That customer contacted Verizon directly, and Verizon agreed to restore the copper loops underlying the customer's service from XO. Verizon also agreed to determine, when requested, on a circuit-by-circuit basis, whether or not other circuits were up and working on copper facilities or whether or not they could be restored on copper facilities. After Verizon confirmed that they had finished testing circuits at XO's request on April 17, 2013, the data provided by Verizon indicated that XO would no longer be able to maintain services on copper in 31 buildings served out of the West Street CO in which XO had customers serviced by copper before the storm (the "31 Buildings").

11. Indeed, in the April 25, 2013 Notice, Verizon identified only five buildings served by the 140 West Street central office where Verizon states the copper was destroyed. The Notice states:

The copper facilities associated with the following addresses served by Verizon's wire center located at 140 West Street New York, NY. CLLI: NYCMNYWS (West Street)

Municipality	Street	Building Number
Manhattan	Fulton Street	40

Manhattan	Gold Street	100
Manhattan	Pearl Street	411
Manhattan	Washington Street	100
Manhattan	Water Street	241

12. Of the 31 Buildings only two are included in the list of five buildings identified by Verizon in its April 25, 2013 Notice. Consequently, to the extent that Verizon “retired” or is “retiring” the copper in the remaining 29 of the 31 Buildings, no notice as required by either the Commission’s *STA Order* or the generally applicable rules has ever been filed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed on June 27, 2013

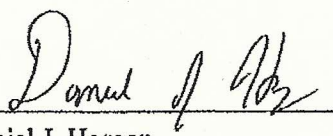

Daniel J. Horgan



EXHIBIT A

October 29 , 2012

Audience: CLEC,ISP,IXC,Resellers,Wireless,ILEC

Subject : Verizon Industry Letter: **URGENT Preparation Efforts and Operational Call Information re: Hurricane Sandy**

In preparation for possible 18 scale power outages and customer maintenance events, Verizon business units have activated national and regional command and control centers, enabling Verizon operations teams to monitor the storms progress and company operations, including network performance. Verizon has established communications with power and other service providers to ensure proper coordination in the event of storm damage. The company also has contacted vendors and other outside partners so that critical communications equipment and supplies can be prioritized, stocked and shipped expeditiously.

Company equipment -- including poles, fiber-optic and copper cable, portable cell sites that can replace a damaged cell tower and mobile emergency generators that can be used when local electrical power fails -- is being staged in and around the mid-Atlantic and Northeast regions.

In addition, Verizon managers are communicating the companys storm preparation efforts and coordinating pre-planned response activities with the public-safety community, as well as state, county and municipal agencies along the East Coast and the Midwest.

Verizon will implement a Maintenance Priority List process for Wholesale customers. Top priority will be to Emergency, Medical, Public Safety, essential Government agencies and TSP coded services.

You are invited to attend a status and update call on Verizons progress:

Tuesday, October 30, 2012

2 pm ET

Bridge 866-914-6872 PC 405 4392#.

This communication is provided by the VGW Account Management Support. Requests to subscribe or unsubscribe to this distribution may be processed at:

<http://www22.verizon.com/wholesale/subscriptions/>